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5 Attorney for Plaintiff
6 DON BORG

7
8 UNITED STATES DISTRICT COURT
9
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10 DON BORG,) No. C 07-03149-JW
11 Plaintiff,)
12 vs.) SUPPLEMENTAL OPPOSITION TO
13) DEFENDANTS' MOTION TO
14 PRINCIPAL LIFE INSURANCE CO.,) DISMISS/MOTION FOR SUMMARY
15 TARGET CORPORATION and DOES 1) JUDGMENT
through 20, inclusive,) DATE JUNE 9 2008
16 Defendants.) TIME 9 AM
17)
18)
19)
20)
21 PLAINTIFF OPPOSES THE DEFENDANTS' MOTION TO DISMISS/MOTION FOR
22 SUMMARY JUDGMENT AND ASKS THE COURT TO CONSIDER THIS
23 SUPPLEMENTAL OPPOSITION, EVEN THO THE COURT WILL NOT CONTINUE THE
24 HEARING DESPITE THE PLAINTIFF'S EX PARTE APPLICATION TO DO SO.

25 PLAINTIFF ASKS THE COURT TO , CONSISTENT WITH FRCP RULE 56, TO GIVE
26 PLAINTIFF A CHANCE TO DO DISCOVERY ON THE FRAUD ISSUE (FRAUD IN THE
27 INDUCEMENT OF PLAINTIFF TO SIGN THE SETTLEMENT AGREEMENT WITH

1 DEFENDANT).

2
3 IT HAS BEEN UNCLEAR WHETHER PLAINTIFF HAS ANY RIGHT TO COMMENCE
4 DISCOVERY AT THIS TIME. IT IS UNFAIR FOR DEFENDANTS TO FILE A MOTION
5 FOR SUMMARY JUDGMENT (MSJ) AS AN "ALTERNATIVE" TO A RULE 12B
6 MOTION. WHY? BECAUSE MSJ CONTEMPLATES A CHANCE FOR DISCOVERY,
7 WHILE RULE 12 DOES NOT., SO IN EFFECT BY FILING A "DUAL" MOTION UNDER
8 RULES 12/56. THE DEFENDANTS HAVE FILED A MSJ WHILE PREVENTING
9 PLAINTIFF FROM CONDUCTING DISCOVERY ON THE VERY FRAUD ISSUE THAT IS
10 THE CRUX OF THE MATTER.

11 IT WILL BE NOTED THAT IN THE JOINT CMC STATEMENT FILED BY THE PARTIES,
12 THE PLAINTIFF DID ASK THE COURT FOR LEAVE TO CONDUCT LIMITED
13 DISCOVERY ON THE FRAUD ISSUE FORTHWITH. NO SUCH ORDER CAME DOWN,
14 HOWEVER.

15
16 IN FAIRNESS TO PLAINTIFF, AND IN FURTHERANCE OF THE COURTS' POLICIES TO
17 LET MATTERS BE DECIDED ON THEIR MERITS, WE DO ASK TO ALLOW PLAINTIFF
18 TO CONDUCT DISCOVERY ON FRAUD PRIOR TO RULING ON THE MSJ/MOTION TO
19 DISMISS.

20
21 WE DO BELIEVE THE AMENDED COMPLAINT ON ITS FACE DOES STATE A VALID
22 CAUSE OF ACTION FOR FRAUD, AND THE COURT SHOULD NOT LOOK BEYOND
23 THE PLEADINGS INTO THE MERITS WITHOUT FIRST GIVING THE PARTIES A
24 CHANCE AT DISCOVERY ON THE FRAUD ISSUE.

25
26 WE ASK THE COURT TO CONSIDER THESE MATTERS.

27 DATED: JUNE 6 2008

28 RESPECTFULLY SUBMITTED,

1 _____/S/_____

2 STANLEY G. HILTON

3 ATTORNEY FOR PLAINTIFF

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